



State of California
Franchise Tax Board



Real Estate Withholding Guidelines

For additional information, contact the Withholding Services and Compliance Section



Telephone: (888) 792-4900 (U.S. toll-free call)
(916) 845-4900 (not a toll-free call)

If you need additional information, please call us. Our automated telephone system allows you to access important information seven days a week, 24 hours a day. If the system does not completely answer your questions, you may speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Asistencia Telefonica y en el Internet

Dentro de los Estados Unidos, llame al (800) 852-5711
Fuera de los Estados Unidos, llame al (cargos aplican) (916) 845-6500

Sitio en el Internet: www.ftb.ca.gov

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos pueden llamar al TTY/TDD (800) 822-6268.



Internet Address: www.ftb.ca.gov
Email Address: WSCS.GEN@FTB.CA.GOV
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FAX: (916) 845-9512



Mailing Address: (for remitting withholding)
FRANCHISE TAX BOARD
PO BOX 942867
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Purpose

This publication provides guidance on the withholding requirements for sales of California real property closing on or after January 1, 2005.

Changes for 2005

Law Changes

Assembly Bill 1338 revised Revenue and Taxation Code Sections 18662 and 18668 for sales of California real property that close on or after January 1, 2005.

AB 1338:

- Eliminates the waiver process for non-individual sellers and replaces it with a self-certification process. Although non-individual sellers will not be able to request reduced withholding on small gains, they will be able to self-certify that they are exempt from withholding if they will have a loss on the sale, they are doing an IRC Section 1031 exchange, or the property is being involuntarily converted and the seller intends to replace it to meet the requirements of IRC Section 1033.
- Expands the exemption for the sale of principal residence to include sellers whose last use of the property was their principal residence even though they do not meet the "two out of the last five years" requirement or one of the special circumstances.
- Clarifies that no withholding is required when the transferee acquires the property at a sale pursuant to a power of sale under a mortgage or deed of trust, at a sale pursuant to a decree of foreclosure, or by a deed in lieu of foreclosure.
- No longer provides for an exemption for irrevocable trusts that have a California resident trustee.
- No longer provides for an exemption for estates when the decedent was a California resident.
- Expands the exemption for the sale of a principal residence to include sales by estates when the property was the decedent's principal residence.

Form Changes

- **Form 593-W**, *Real Estate Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers*, has been eliminated.
- **Form 593-C**, *Real Estate Withholding Certificate*. Non-individuals will now use Form 593-C to self-certify whether they are exempt from withholding.
- **Form 593-L**, *Real Estate Withholding – Computation of Estimated Gain or Loss*. Non-individuals may now use Form 593-L to determine if they will have a loss on the sale.

- **Form 593-I**, *Real Estate Withholding Installment Sale Agreement*. Non-individual sellers can now ask the buyer to complete Form 593-I if the California real estate is sold on an installment basis.

Use forms with pre-printed year 2005 for escrows closing on or after January 1, 2005. Go to our Website, www.ftb.ca.gov, to get current forms and real estate information.

Questions and Answers

Part I. General Information

1. What is real estate withholding?

Real estate withholding is a prepayment of California state income tax for sellers of California real property (similar to wage withholding).

2. Is real estate withholding an additional tax on the sale of California real property?

No. Real estate withholding is not an additional tax on the sale of real estate. It is a prepayment of the income (or franchise) tax due on the gain from the sale of California real property.

3. What is the withholding rate?

The withholding rate is $3\frac{1}{3}$ percent of the total sales price.

4. When is withholding required?

Withholding is required on sales or transfers of California real property when the total sales price exceeds \$100,000 and:

- The seller is a corporation with no permanent place of business in California immediately after the sale, or
- The seller is an individual or any other type of entity except for a partnership.

Note: Sellers who meet the above criteria may still qualify for a full or partial exemption (see *Part III, Exemptions*).

5. When is withholding not required?

Withholding is not required when any of the following are true:

- The total sales price does not exceed \$100,000.
- The seller is a bank or bank acting as a fiduciary for a trust.
- The property is being foreclosed upon.
- The seller meets a full exemption on Form 593-C.

6. What is a "buyer"?

We use the term *buyer* throughout this publication to refer to the buyer or any other transferee of the property.

7. What is a “seller”?

We use the term *seller* throughout this publication to refer to the seller or any other transferor of the property.

8. How can I get withholding forms and publications?

To get withholding forms and publications (including additional copies of Pub. 1016), contact us:

At our Website: www.ftb.ca.gov

By telephone: (888) 792-4900 (toll-free)
(916) 845-4900

9. Can sellers whose withholding payment is more than their tax liability receive an early refund from the Franchise Tax Board?

No. The law does not provide for early refunds of taxes withheld on sales of real estate. You must claim the amount withheld on your California tax return after the end of the taxable year.

10. Does withholding relieve sellers from the requirement to file California tax returns?

No. Sellers must file California tax returns if they meet the filing requirements. If withholding is more than the actual tax liability, we will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.

11. If sellers are exempt from withholding, are they still required to file California tax returns?

Yes. Sellers must file California tax returns if they meet the filing requirements.

12. How can sellers determine if the Franchise Tax Board requires them to file California tax returns?

Usually, California real property sellers must file a California tax return. For more information on California filing requirements, or to order tax forms, call the numbers listed below:

From within the United States (800) 852-5711

From outside the United States . . . (916) 845-6500
(not toll-free)

For hearing impaired with TDD (800) 822-6268

Tax forms and information are available on our Website:

www.ftb.ca.gov

However, buyers normally delegate the responsibility to the escrow company.

The escrow company should:

- Give the Form 593-C/Form 593-L Booklet to all sellers.
- Withhold when required.
- Complete Forms 593 and 593-B when withholding is done.
- Give Copies B & C of Form 593-B to the sellers.
- Send Copy A of Form 593-B to Franchise Tax Board with Form 593 and the withholding payment.

See *Part V, Reporting and Remitting Withholding*, for more information.

15. How must escrow companies notify buyers of the withholding requirements?

The real estate escrow person must provide written notification to the buyer or other transferee unless the transferee is an intermediary or accommodator in a deferred exchange. The written notification must be in substantially the same language as follows:

In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3¹/₃ percent of the sales price in the case of a disposition of California real property interest by either:

1. *A seller who is an individual, trust, or estate or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR*
2. *A corporate seller that has no permanent place of business in California immediately after the transfer of title to the California property.*

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. *The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR*
2. *The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California, OR*
3. *The seller, who is an individual, trust, estate or a corporation without a permanent place of business in California, executes a written certificate, under the penalty of perjury, of any of the following:*
 - A. *The California real property being conveyed is the seller's or decedent's principal residence (within the meaning of Section 121 of the Internal Revenue Code).*

Part II. Withholding Agent

13. Who must withhold?

Although the law requires buyers to withhold, they can request the escrow person to do the withholding. We use the term *withholding agent* throughout this publication to refer either to the escrow person or the buyer, whoever is taking responsibility for withholding.

14. What is the escrow company required to do?

It is the escrow company's responsibility to give written notice of the withholding requirements to the buyers. Once the escrow company notifies the buyers, it is the buyer's responsibility to withhold.

- B. The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.*
- C. The California real property being conveyed is or will be exchanged for property of like kind (within the meaning of Section 1031 of the Internal Revenue Code), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.*
- D. The California real property has been compulsorily or involuntarily converted (within the meaning of Section 1033 of the Internal Revenue Code) and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.*
- E. The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes.*

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

16. When a transfer is done without an escrow, who must notify buyers of the withholding requirements?

The person responsible for closing the transaction (attorney, title company, etc.) must notify buyers of the withholding requirements. If no one is responsible for closing the transaction, then the person who receives and disburses the funds for the property sold is responsible for notifying the buyers.

17. Are withholding agents responsible for verifying sellers' certifications on Form 593-C?

Withholding agents should only verify certifications to the extent that they have knowledge of the facts. If they have no knowledge of the facts, then they must only verify that the certificate is complete and signed. Withholding agents should not rely upon an incomplete or unsigned certificate. Examples:

1. A seller completes Form 593-L, *Real Estate Withholding – Computation of Estimated Gain or Loss*, and certifies a loss on the transaction. We do not require the withholding agent to verify the amounts shown on Form 593-L.
2. A seller completes Form 593-C, *Real Estate Withholding Certificate*, and certifies that the sale is an installment sale. However, the buyer has not provided a completed and signed Form 593-I, *Real Estate Withholding Installment Sale Agreement*. The withholding agent should not accept Form 593-C and should withhold.
3. A seller completes Form 593-C, and certifies that a partnership is selling the property, but the withholding agent knows that the recorded title is not in the name of the partnership. The

withholding agent should not accept the exemption certificate and should withhold. However, see Question 52.

18. Can the escrow company charge a fee for withholding?

Yes. The escrow company may charge no more than \$45 for providing assistance in complying with the withholding requirements.

"Assistance" includes, but is not limited to:

- Helping the parties clarify whether withholding is required with the Franchise Tax Board.
- Withholding and remitting the payment to the Franchise Tax Board.

"Assistance" does not include:

- Providing written notification of the withholding requirements to buyers.
- Providing the Form 593-C/Form 593-L Booklet to sellers.

19. Who pays the escrow fee for withholding?

The fee is negotiable. Either buyers or sellers may pay the escrow withholding fee.

20. Does withholding relieve the escrow person from the Form 1099-S reporting requirements?

No. The regular Form 1099-S requirements continue to apply.

Part III. Exemptions

In General

21. What are the withholding exemptions for sellers?

Sellers are exempt from withholding if the:

- Property qualifies as their principal residence per Internal Revenue Code (IRC) Section 121.
- Property was last used as their principal residence under IRC Section 121.
- Sale will result in a loss or zero gain for California tax purposes.
- Transaction will qualify as a like-kind exchange, with the exception of boot (IRC Section 1031).
- Transaction will qualify as an involuntary conversion (IRC Section 1033).
- Transaction will qualify for nonrecognition treatment under IRC Section 351 (transfer to a corporation controlled by the transferor) or IRC Section 721 (contribution to a partnership in exchange for a partnership interest).
- Seller is a corporation with a permanent place of business in California.
- Seller is a partnership.
- Seller is an LLC classified as a partnership for federal and California income tax purposes, which is not a single member LLC that is disregarded for federal and California income tax purposes.
- Seller is a tax-exempt entity.
- Seller is an insurance company, individual retirement account (IRA), qualified pension plan, or charitable remainder trust.

Sellers who meet one of the above exemptions must sign a written certification (Form 593-C) under penalty of perjury to be exempt from withholding.

22. What form do sellers use to certify that they qualify for an exemption?

Sellers must use California Form 593-C, *Real Estate Withholding Certificate*, to certify that they qualify for one of the exemptions. Sellers must give a completed and signed form to the withholding agent by the close of escrow or withholding will be required. The withholding agent will be relieved of the withholding requirements if they rely in good faith on a completed and signed Form 593-C that certifies an exemption.

23. Does the law always require withholding when sellers do not qualify for any of the exemptions?

Withholding is required unless the sale qualifies for an automatic exemption (total sales price is \$100,000 or less, the transferor is a bank acting as a trustee other than a trustee of a deed of trust, or the transferee is acquiring the property as part of a foreclosure). To be excluded as part of a foreclosure, the transferee must be acquiring the property:

- At a sale pursuant to a power of sale under a mortgage or deed of trust,
- At a sale pursuant to a decree of foreclosure, or
- By a deed in lieu of foreclosure.

24. Once sellers complete and sign Form 593-C, should the Form 593-C be sent to the Franchise Tax Board for review/approval?

No. Form 593-C should not be sent to FTB unless requested by the FTB. The escrow company must keep this form in their files for five years following the close of the transaction.

25. Can sellers request a waiver?

No. There is no longer a waiver process for any sellers. The certification process has replaced the waiver process for all sellers. Sellers can get Form 593-C, *Real Estate Withholding Certificate*, to certify that they qualify for an exemption.

26. Can sellers who will have a small gain or a lower tax liability apply for reduced withholding?

No. There is no longer any provision in the law that allows reduced withholding for any sellers. The withholding agent must withhold the full $3\frac{1}{3}$ percent of the total sales price even when the sale will only result in a small gain.

Principal Residence

27. Does the law require withholding on the sale of a principal residence?

There is no withholding if sellers certify on Form 593-C that the property qualifies as their principal residence under IRC Section 121.

28. What qualifies as a principal residence under IRC Section 121?

Generally, a home will qualify as a principal residence if, during the five-year period ending on

the date of the sale, the sellers have owned and lived in the property as their main home for at least 2 years. There are exceptions to the two-year rule if the primary reason they are selling the home is due to a change in their place of employment, health, or other unforeseen circumstances such as death, divorce, or loss of job, etc.

There may be other restrictions, limitations, or exceptions. For more details, get IRS Publication 523, *Selling Your Home*, by accessing the Internal Revenue Service Website, www.irs.gov, or by calling the IRS at (800) 829-3676.

29. Can sellers certify that the property was their principal residence even though they are not living in it at the close of escrow?

Even though the sellers do not currently live in the property, it may still qualify as their principal residence. If the sellers have owned and lived in the property as their main home for at least two of the past five years, then they meet the requirement. The two years can be any two years during the five-year period.

For example, the sellers retired $2\frac{1}{2}$ years ago and moved from their city home of 20 years to a home on the coast. For the past $2\frac{1}{2}$ years, they have been renting the city home and are now selling it. Since the sellers have owned and lived in the home as their main home for at least two of the last five years, they may certify the city home was their principal residence.

30. Can sellers claim the property as their principal residence if they have not owned or lived in the property for 2 years and do not meet any of the exceptions or unforeseen circumstances under IRC Section 121?

If the property was last used as the seller's principal residence within the meaning of IRC Section 121 without regard to the two-year time period, no withholding is required. If the last use of the property was as a vacation home, second home or rental, the seller does not qualify for an exemption. Sellers must have lived in the property as their main home. If they have two homes and lived in both of them, the main home is the one they lived in most of the time.

Note: The exemption based on the seller's last use of the property as their principal residence is for withholding purposes only. IRC Section 121 has not changed. If the sale does not qualify for exclusion under IRC Section 121, the gain must be reported on the seller's federal and California tax returns.

31. Does the law require withholding when an estate is selling property that was the decedent's principal residence?

No. The exemptions for the sale of a principal residence were expanded to include sales by estates when the property was the decedent's principal residence under IRC Section 121.

32. What types of property qualify as a principal residence?

A mobile home, houseboat, cooperative apartment, or condominium can be a principal residence. Usually, the place where the seller lives is the principal residence. If the seller owns more than one home, the principal residence is the home lived in most of the time.

33. What types of property do not qualify as principal residences?

Generally, the following types of property do not qualify as principal residences:

- Rental property
- Vacant land
- Vacation home or second home

However, property that has been rented or used as a vacation home may still qualify as a principal residence if the seller meets the criteria under IRC Section 121.

34. Does the law require withholding when the property is a multiple family unit (duplex, triplex, etc.) and the sellers lived in one of the units as their principal residence?

Yes. However, the law only requires withholding on the portion of the sales price that is not for the principal residence. The sales price should be allocated between the principal residence and the remainder of the units using the same method that the seller used to determine depreciation.

Withholding is still required when the total sales price of all the units exceeds \$100,000, even if the portion of the sales price related to the non-principal residence does not exceed \$100,000.

35. When does the law require withholding on the sale of a mobile home?

The law requires withholding if the mobile home was not the seller's principal residence and the mobile home is permanently affixed to a foundation or is subject to real property taxes. The law also requires withholding on the land sold with the mobile home.

Loss or Zero Gain

36. Does the law require withholding when the seller will not have a gain on the sale?

Withholding is not required when the seller certifies on Form 593-C that the sale will result in a loss or zero gain for California income tax purposes.

37. What is "a loss or zero gain for California income tax purposes"?

A loss or zero gain for California income tax purposes means that sellers will report a loss or zero gain on the sale on their California tax return. There is a loss or zero gain on the sale when the adjusted basis is more than or equal to the selling price (less selling expenses).

It is not a loss or zero gain just because there are no proceeds from the sale or because the property is selling for less than what it is worth.

38. How do sellers determine if they will have a loss or zero gain on the sale?

If sellers believe they may have a loss or zero gain on the sale, they must complete Form 593-L, *Real Estate Withholding – Computation of Estimated Gain or Loss*. Sellers can only certify that they will have a loss or zero gain on the sale if they have completed Form 593-L and they have a loss or zero gain on Line 16 of Form 593-L.

39. Can sellers use suspended passive activity losses or other losses to compute the loss or zero gain on the sale?

Sellers may only use passive activity losses that directly relate to the property being sold. They may not use losses that are not directly related to this property (e.g., capital loss carryforwards, stock losses, passive activity losses from other properties).

40. Who is responsible for completing Form 593-L?

The seller is responsible for completing Form 593-L.

41. Once sellers certify that they have a loss or zero gain, should the Form 593-L be sent to the Franchise Tax Board for review/approval?

No. Form 593-L should not be sent to FTB unless requested by the FTB. Usually, sellers retain Form 593-L, and they should keep Form 593-L for five years following the close of the transaction. If sellers give Form 593-L to the escrow company, the escrow company should keep it for five years.

Involuntary Conversions

42. Does the law require withholding when the sale is the result of an involuntary transfer such as a condemnation?

Withholding is not required when sellers certify on Form 593-C that the transfer is the result of an involuntary transfer as defined under IRC Section 1033 and that they intend to replace the property with qualified property.

43. What is an "involuntary conversion"?

An involuntary conversion occurs when property is destroyed, condemned, or disposed of under the threat of condemnation and other property or money is received in payment. For example, the government informs the seller that it intends to acquire the seller's property for public use.

To qualify for the withholding exemption, the seller must also intend to replace the property with qualified property. In general, the replacement property must be similar or related in service or use to the converted property. Get IRS Publication 544, *Sales and Other Dispositions of Assets*, for information about involuntary conversions.

Contributed Capital

44. Does the Franchise Tax Board require withholding when the property is transferred to a corporation or contributed to a partnership?

Withholding is not required when transferors certify on Form 593-C that the transfer qualifies for nonrecognition treatment under IRC Section 351 (property is being transferred to a corporation controlled by transferor) or IRC Section 721 (property is being contributed to a partnership in exchange for a partnership interest).

IRC Section 1031 Exchanges

45. Does the law require withholding when the sale is part of a like-kind exchange as defined under IRC Section 1031?

Withholding is not required on the initial transfer if the seller certifies on Form 593-C that:

- The transaction will qualify as a simultaneous like-kind exchange. However, if the seller receives any proceeds (boot) from the sale, the withholding agent must withhold $3\frac{1}{3}$ percent of that amount, or
- The transaction will qualify as a deferred like-kind exchange. However, if the seller receives any proceeds (boot) from the sale, the withholding agent must withhold $3\frac{1}{3}$ percent of that amount.

The intermediary or accommodator must withhold $3\frac{1}{3}$ percent of the total sales price if the exchange does not occur or does not meet the requirements of IRC Section 1031.

46. Is there a minimum amount of boot (cash or cash equivalent) the seller must receive before withholding is required?

Yes. Withholding is only required on boot payments if the cash or cash equivalent exceeds \$1500. If the cash or cash equivalent exceeds \$1500, withholding is required on the total payment.

Installment Sales

47. Must the withholding agent withhold the full $3\frac{1}{3}$ percent of the total sales price on installment sales?

The withholding agent must withhold the full $3\frac{1}{3}$ percent of the total sales price when escrow closes unless the buyer agrees to withhold $3\frac{1}{3}$ percent of each installment principal payment. To withhold on each principal payment, the buyer must complete and sign Form 593-I, *Real Estate Withholding Installment Sale Agreement*. The buyer must give this form to the escrow company. The escrow company will then withhold only $3\frac{1}{3}$ percent of the down payment and attach Form 593-I to Form 593-B when the withholding on the down payment is sent to FTB.

48. What if the seller wants the buyer to withhold on each installment payment, but the buyer does not?

If the buyer does not want to withhold on each installment payment, $3\frac{1}{3}$ percent of the total sales price must be withheld at the time of the sale. Only the buyer can elect to withhold from each installment payment. The election is irrevocable and must be in writing.

Corporations

49. Does the law require withholding when a corporation sells California real property?

Yes. Withholding is required unless the corporation certifies on Form 593-C that it will continue to have a permanent place of business in California after the sale.

50. When does a corporation have a permanent place of business in California?

Corporations have a permanent place of business in California if they meet one of the following conditions:

- They are incorporated in California.
- They are qualified to transact business in California through the Secretary of State.
- They will still maintain a permanent office in California permanently staffed by its employees after the sale.

Partnerships

51. Does the law require withholding when a partnership sells California real property?

No. Withholding is not required if title to the property is recorded in the name of a partnership. However, partnerships are required to withhold on nonresident partners. Get FTB Pub. 1017, *Nonresident Withholding Partnership Guidelines*, for more information.

Limited Liability Companies (LLCs)

52. Does the law require withholding when a single member limited liability company is the seller?

If the single member LLC is classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. Withholding is required unless the LLC meets one of the exemptions as a corporation.

If the LLC is a single member LLC that has chosen to be disregarded for federal and California income tax purposes, then that single member is considered the seller and title to the property is considered to be in the name of the single member for withholding purposes.

- If the single member is an individual, Form 593-C should be completed using the individual's information.

- If the single member is a corporation, Form 593-C should be completed using the corporation's information.
- If the single member is a partnership, Form 593-C should be completed using the partnership's information.
- If the single member is an LLC, Form 593-C should be completed using the single member's information.

53. Does the law require withholding when a multiple member limited liability company is the seller?

If a multiple member LLC elected to be classified as a corporation for federal and California income tax purposes, then the seller is considered a corporation for withholding purposes. See Question 49.

If a multiple member LLC elected to be classified as a partnership for federal and California income tax purposes, then the seller is considered a partnership for withholding purposes and no withholding is required.

Tax-Exempt Entities

54. Does the Franchise Tax Board require withholding when the seller is a tax-exempt entity?

Withholding is not required when the seller certifies on Form 593-C that it is exempt from withholding because it is exempt from tax under either California or federal law (e.g., religious, charitable, educational).

55. Does the Franchise Tax Board require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation sell the property?

FTB does not require withholding when other state, federal or local government agencies, or the Resolution Trust Corporation are the sellers.

Other Exemptions

56. Does the Franchise Tax Board require withholding when the seller is an insurance company?

No. Insurance companies are not subject to withholding because they do not pay income taxes. Insurance companies pay a gross premium tax to the California Department of Insurance instead of income or franchise tax. The seller should use Form 593-C to certify that it is an insurance company.

57. Does the Franchise Tax Board require withholding when the seller is a charitable remainder trust?

Withholding is not required when the seller certifies on Form 593-C that it is a charitable remainder trust.

58. Does the Franchise Tax Board require withholding when the seller is an individual retirement account, a qualified pension or a profit-sharing plan?

Withholding is not required when the seller certifies

on Form 593-C that it is an individual retirement account, a qualified pension or a profit-sharing plan.

Part IV. Other Common Questions

Multiple Sellers/Parcels

59. How is withholding calculated when there are multiple sellers?

The withholding is calculated by applying the withholding rate to each seller's proportion of the total sales price.

Example:

Total sales price \$200,000

Sellers' ownership percentages:

A = 20%, B = 30%, C = 50%

Withholding per seller:

A $\$200,000 \times 20\% \times .0333 = \$1,332$

B $200,000 \times 30\% \times .0333 = 1,998$

C $200,000 \times 50\% \times .0333 = 3,330$

60. Does the Franchise Tax Board require withholding when sellers are on title for incidental purposes?

If the incidental sellers have no financial ownership, then their ownership percentage is zero and there is no withholding required on them.

Examples of sellers who are on title for incidental purposes are:

- Father is on title only because he cosigned to help daughter qualify for a loan. If father completes Form 593-C showing zero percentage of ownership, no withholding is required on father. Daughter is subject to the normal withholding requirements.
- Son is on title only to receive property upon mother's death. If son completes Form 593-C showing zero percentage of ownership, no withholding is required on son. Mother is subject to the normal withholding requirements.

61. Does the law require withholding on the sale of multiple parcels when the total sales price of all properties exceeds \$100,000 but the sales price of each separate parcel is under \$100,000?

Yes. Sales of multiple parcels within the same escrow constitute one transaction for determining the withholding requirements.

Revocable/Irrevocable Trusts

62. When a trust holds title to the property, who is considered the seller?

If the trust is revocable, then the seller is the grantor. Usually the grantor of a revocable trust is an individual. All withholding forms should be completed using the individual's (grantor's) information.

If the trust is irrevocable, then the seller is the trust. All withholding forms should be completed using the

name of the trust and the trust's federal employer identification number (FEIN). DO NOT USE trustee information on withholding forms.

63. What is a revocable trust?

A revocable (or grantor) trust is a trust where the grantor (person who transferred the property into the trust) retains the right to cancel or revoke the trust. For tax purposes, a revocable trust is not a separate entity. A revocable trust is transparent for tax purposes and the grantor must report the sale and claim the withholding on its individual tax return.

64. Does the law require withholding on sales by revocable trusts?

Yes. Withholding is required unless the grantor qualifies for an exemption on Form 593-C, *Real Estate Withholding Certificate*. However, see Question 62.

65. Does the law require withholding on sales by family trusts or living trusts?

Typically, family trusts and living trusts are revocable trusts and the sellers are the grantors. Therefore, withholding is required unless the grantors qualify for an exemption on Form 593-C. However, see Question 62.

Relocation Companies

66. What are the withholding rules when the buyer is a relocation company?

Sales to relocation companies are subject to the same rules as other sales. There is no withholding on the sale if the relocating sellers certify that the property was their principal residence or if they qualify for any other exemption. Otherwise, withholding is required.

67. What are the withholding rules when the seller is a relocation company?

Relocation companies are subject to the same rules as other non-individuals. Examples are:

1. A relocation company resells the property to a third party.
 - There is no withholding on the sale if the relocation company meets an exemption.
 - If the relocation company does not meet an exemption, withholding is required.
2. An employer gives a relocation company power of attorney to act on its behalf in the resale of property to a third party.
 - No withholding is required on the sale if the employer has a permanent place of business in California. The employer can use Form 593-C to certify this fact.
 - If the employer does not have a permanent place of business in California, withholding is required.
 - The relocation company is not subject to real estate withholding because it is only acting as an agent for the seller.

Real Estate Investment Trusts (REIT)

68. Does the Franchise Tax Board require withholding when a Real Estate Investment Trust sells the property?

For withholding purposes, a REIT is treated as a corporation. Withholding is not required as long as the REIT has a permanent place of business in California. See Question 50.

Bankruptcy Trusts and Estates

69. Does the Franchise Tax Board require withholding when a bankruptcy trust or estate sells the property?

Yes. There is no longer a provision in the law to exempt trusts with a California trustee.

Estates

70. Does the law require withholding on sales by estates?

Yes. There is no longer a provision in the law to grant an exemption to an estate when the decedent was a California resident. However, if the property being sold qualifies as the decedent's principal residence, withholding is not required. See Questions 30 and 31.

Conservatorships

71. Does the Franchise Tax Board require withholding on sales by conservators?

Yes. Withholding is required unless the conservatee qualifies for an exemption on Form 593-C. The conservator should complete Form 593-C using the conservatee's information.

Leaseholds/Options

72. Is withholding required on the sale of a leasehold interest in California real property?

Yes. Since the sale of a leasehold is considered a sale of a real property interest, withholding is required.

73. Is withholding required on the sale of an option to buy California real property?

Yes. Since the sale of an option to buy real property is considered a sale of a real property interest, withholding is required.

Personal Property

74. Does California require withholding on personal property sold with real property?

Yes. California requires withholding on the total sales price, unless the personal property is stated separately in the sales contract.

Cash-Poor Transactions

75. Does the law require withholding in a cash-poor transaction?

Yes. The fact that a transaction is cash-poor is not an exemption to withholding. The parties must arrange to pay the withholding.

76. When a tax lien is recorded on the property, which is paid first, the tax lien or the withholding?

Use the proceeds in the escrow account to first pay the required withholding before applying the proceeds to an existing lien (including IRS liens). If there are not enough proceeds to pay off an IRS lien and the withholding, the parties can arrange to pay the withholding outside of escrow.

Part V. Reporting and Remitting Withholding

77. What forms must the withholding agent use to report and remit withholding?

The withholding agent must use California Form 593, *Real Estate Withholding Remittance Statement*, and Form 593-B, *Real Estate Withholding Tax Statement*, to report and remit withholding. Send Form 593 and Copy A of Form 593-B to the Franchise Tax Board with the payment. Give Copies B and C to the sellers. The withholding agent **MUST** provide the sellers with their copies to attach to their California tax returns to claim the credit for the amount withheld. The withholding agent retains Copy D.

78. When sellers are husband and wife, how many Forms 593-B should withholding agents file?

Normally, they should file just one Form 593-B for a husband and wife. However, if the husband and wife intend to file separate returns and wish to have the withholding applied to separate accounts, then each spouse should have a separate Form 593-B. Each spouse's Form 593-B should include only the spouse's proportional share of the withholding.

79. When there is more than one seller (other than husband and wife), how many Forms 593-B should withholding agents file?

They should file a separate Form 593-B for each seller. Each seller's Form 593-B should include only the seller's proportional share of the withholding.

80. What should the withholding agent do if the seller has not returned a completed Form 593-C by the close of escrow?

The withholding agent should withhold $3\frac{1}{3}$ percent of the total sales price.

81. When should the withholding agent send the withholding on regular sales to the Franchise Tax Board?

The withholding, Form 593, and Copy A of Forms 593-B are due by the 20th day of the month following the month escrow closes. We suggest you

send the total amount withheld for all transactions that closed during the month with one Form 593. However, you have the option to send in one payment and one Form 593 with the related Forms 593-B for each escrow.

82. When should the withholding on IRC Section 1031 like-kind exchanges be sent to the Franchise Tax Board?

The withholding, Form 593, and Copy A of Forms 593-B are due by the 20th day of the month following the month in which the exchange was completed or failed. For simultaneous exchanges, this is the month escrow closed. For deferred exchanges, this is the month the last leg of the exchange was completed. For failed exchanges, this is the month when it was determined that the exchange would not meet the IRC Section 1031 requirements and the proceeds were distributed to the seller.

83. When should the withholding on installment payments be sent to the Franchise Tax Board?

- Withholding on down payment:
The original Form 593-I, a copy of the promissory note, the withholding, Form 593, and Copy A of Form 593-B are due by the 20th day of the month following the month escrow closed.
- Withholding on subsequent principal payments:
The withholding, Form 593, and Copy A of Form 593-B are due by the 20th day of the month following the month of the installment principal payment.

84. In what year should withholding be reported when the relinquished property in a Section 1031 exchange is sold in one year, but the proceeds are not distributed until the next year?

If the proceeds from a completed or failed exchange are not distributed until the year after the relinquished property is sold, the withholding should be reported for the year in which the proceeds were distributed since the seller qualifies for installment sale reporting.

85. Where should the withholding agent send amounts withheld?

Amounts withheld, along with Form 593 and Copy A of Forms 593-B, should be sent to:

**FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651**

Do NOT send amounts withheld directly to the Withholding Services and Compliance Section.

Part VI. Interest and Penalties

86. Does the Franchise Tax Board charge interest on late withholding payments?

Yes. Assessing interest on late payments is mandatory. Interest is not a penalty, but compensation for the use of funds. The Franchise

Tax Board computes interest from the due date of the withholding payment to the date it was received.

87. What is the penalty for not properly notifying buyers?

The penalty is the greater of \$500 or 10 percent of the required withholding.

88. What is the penalty for not withholding?

The penalty for not withholding is the greater of \$500 or 10 percent of the required withholding.

89. Can Franchise Tax Board withdraw the penalty for not withholding?

Yes. If the failure to withhold was due to reasonable cause, the Franchise Tax Board will withdraw the penalty.

90. What is "reasonable cause"?

"Reasonable cause" is a standard exception to most penalties under the California Revenue and Taxation Code and the Internal Revenue Code.

Generally, reasonable cause exists where noncompliance occurs despite the exercise of ordinary business care and prudence.

91. What is the penalty for not filing a timely and correct Form 593-B with the Franchise Tax Board?

A \$15 penalty is charged if withholding agents file a correct Form 593-B within 30 days after the due date. A \$50 penalty is charged if a correct Form 593-B is filed more than 30 days after the due date or if a correct Form 593-B is never filed.

If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding.

The penalty is for each Form 593-B that the withholding agent does not file correctly or timely.

92. What is the penalty for not providing a timely and correct Form 593-B to the sellers?

A \$50 penalty is charged if the withholding agent does not provide the sellers with correct copies of Form 593-B by the due date. If the noncompliance is due to an intentional disregard of the requirements, the amount increases to the greater of \$100 or 10 percent of the required withholding.

The penalty is for each Form 593-B that is not furnished correctly or timely.

93. What constitutes a correct Form 593-B?

Form 593-B is correct when all of the following occur:

- All applicable fields are completed.
- The information is correct.
- The correct version of the form is used. The pre-printed year must match the year the transaction occurred. For sales, this is the year escrow closed. For installment payments, this is the year of the installment payment. For exchanges, this is the year the last leg of the exchange was

completed or when it was determined that the exchange would not meet the IRC Section 1031 requirements and any cash or cash equivalent was distributed to the seller.

94. What is the penalty for completing a false certification?

If the seller knowingly executes a false exemption certificate, the penalty is the greater of \$1,000 or 20 percent of the required withholding.

Part VII. Where To Get More Information

95. Where can I get more information about the withholding requirements?

To get withholding forms and publications or to speak to a representative, contact the Franchise Tax Board's Withholding Services and Compliance Section's automated telephone service at (888) 792-4900 (US toll-free) or (916) 845-4900.

Our automated telephone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

If you have Internet access, you can view, download, and print withholding forms, publications (including additional copies of Pub. 1016), and California tax forms from the Franchise Tax Board's Website at www.ftb.ca.gov.

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